IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELfTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE GHULAM MOHAMMED**

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**WRIT PETITION NO : 20159 of 1993**

Between:

PVV Prasad, S/o P. Ramanujulu

Aged about 31 years, Regular Service

in TTDs working as Assistant in the Technical

Establishment Section, TTDs, Tirupati,

R/o. Tirupati, Chitoor District.

**..... PETITIONER**

AND

The Executive Officer,

Tirumala Tirupati Devasthanam

Tirupati, Chittoor District.

**.....RESPONDENT**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction particularly in the nature of writ of mandamus declaring the action of the respondent in regularizing the petitioner as Binder Grade-II instead of Assistant in TTD service as per GO Ms.No.296 Rev.(endts-III) Department dated 19-4-1988 as arbitrary, discriminatory, unjust and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondent to regularize the petitioner's services as Assistant as per GO Ms.No.296

Rev. (Endts-III) Department 19-4-1988 by treating the petitioner to be a NMR Assistant in TTD service with all consequential benefits including the notional seniority in the cadre of Assistant etc. and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**Counsel for the Petitioner:MR.V.JAGAPATHI, Advocate**

**Counsel for the Respondent : Mr. P. Suresh Reddy, SC for TTD**

**The Court made the following :**

ORDER: (GM,J)

This writ petition is filed seeking to issue writ of mandamus declaring the action of the respondent in regularizing the petitioner as Binder Grade-II instead of Assistant in TTD service as per GO Ms.No.296 Rev.(endts-III) Department dated 19-4-1988 as arbitrary, discriminatory, unjust and violative of Articles 14 and 16 of the Constitution of India and consequently direct the respondent to regularize the petitioner's services as Assistant as per GO Ms.No.296 Rev. (Endts-III) Department 19-4-1988 by treating the petitioner to be a NMR Assistant in TTD service with all consequential benefits including the notional seniority in the cadre of Assistant

The case of the petitioner is that he was appointed in TTDs on Nominal Muster Roll (NMR) basis in November, 1979 and as there was shortage of manpower in TTDs press, the petitioner was allotted to work TTDs press. It is stated that the petitioner made representations to the Executive Officer, Tirumala Tirupati Devesthanam, Tirupati, the respondent herein to transfer and post him as NMR Assistant and accordingly his request was considered and he was transferred to

Establishment Section, TTD Administration Office, to work as NMR Assistant in place of Sri P. Ramakrishna Rao NMR Assistant, who was posted to some other section. It is further the case of the petitioner that thereafter he was transferred and posted to the TTDs Garden Office, Tirupati, and from there to TTDs Welfare Office and ultimately the petitioner was again transferred to work in Technical Establishment Section, vide Memo Roc.NO.TLI/26193/90, dated 15-10-1990 and since then he is discharging the duties of Assistant and being continued as such in that Section. It is further stated that since initially the petitioner was allotted to TTDs Press his salary was being drawn by the TTDs Press.

It is further stated by the petitioner that the Government of Andhra Pradesh issued GO Ms.No.296, Revenue (endowments-III) Department, dated 19-4-1988 according permission to regularize the services of all the persons employed in the TTDs as NMRs during the period from 1-1-1979 on regular basis and pursuant to the said GO, the respondent vide proceedings in Roc. No.B5/17760/90, dated 30-10-1990 absorbed all the NMR employees in TTDs service with effect from 11-10-1990. The respondent vide proceedings dated 19-4-1988 further clarified that the services of the NMR employees be regularized with effect from 19-4-1988.

It is further stated that while the matter stood thus, the Press Manager, TTDs by proceedings Roc.No.P1/234/Press/85, dated 7-11-1990 informed the respondent that the employees including the petitioner, who were initially posted to TTDs Press but subsequently deputed to work in various other Sections, even though their salaries were being drawn by the TTD Press, basing on the certificates issued by the concerned Heads of the Sections, requested the respondent either to send them back to TTD Press or alternatively absorb them in the posts in which they were working to avoid problems such as declaration of probation, preparation of seniority lists etc. The case of the petitioner is that other persons have been sent back to TTDs press, however, he was continued to work in the Technical Establishment

Section. It is further stated that the respondent vide proceedings Roc. No.TL3/47462/90, dated 17-12-1990 regularized the petitioner's services in the scale of pay of Rs.810-25-1060-30-1420 in the cadre of Binder Grade-II.

The grievance of the petitioner is that inasmuch as the petitioner has been continuously working as Assistant in Technical Establishment Section, his services ought to have been regularized in the post of Assistant instead of Binder Grade-II. It is stated that the Press Manager TTD Press by his proceedings in Roc.No.P1/111/Press/TPT/92, dated 21-5-1993 informed the respondent that since the petitioner is working in Administration Office i.e. in Establishment Section his salary cannot be drawn by the TTD Press and pursuant to the said proceedings, the respondent vide proceedings in Roc.No.E6/33391/AEO(E)/93, dated 23-9-1993 directed to draw the salary in the Establishment Section including to send the service register to the Establishment Section. The petitioner further states that he possess the qualification prescribed for regularization as Assistant as on the date of regularization of his services. It is his further case that similarly placed employees were absorbed as Assistants whereas he has been discriminated.

A counter affidavit has been filed on behalf of the respondent by the Joint Executive Officer, TTD, Tirupati, wherein it is stated that the petitioner was initially appointed as NMR Binder in TTDs Press. It is further stated that the petitioner was directed to work in Welfare Office, Establishment Section etc. and his services were utilized wherever necessary and pursuant to the GO Ms.No.296, dated 19-4-1988 and basing on the proposals submitted by the Manager, TTDs Press, Tirupati, the petitioner's services were regularized as Binder Gr.-II and he is being sanctioned the regular increments also in the same cadre. It is also stated that the scale of pay of both the cadres i.e. Binder Gr.-II and Assistant is one and the same. It is also stated that as per the existing service rules issued in GO Ms.No.1060, dated 24-10-1989, the requisite qualification required for the post of Assistant/Shroff is intermediate

examination or any other qualification equivalent thereto and the petitioner is not having the requisite qualification to hold the post of Assistant as per the existing service rules. It is further stated that the petitioner was repatriated to his original Section i.e. TTDs Press vide Memo Roc. No.TL3/5965/94, dated 9-6-1994 and he is relieved on the forenoon of 13-6-1994.

Mr. V. Jagapathi, learned counsel for the petitioner strenuously contends that inasmuch as the petitioner was not given any appointment order initially as NMR Binder, his services ought not to have been regularized in the cadre of Binder Gr-II. Learned counsel also submits that as on the date of regularization of the services the qualification being 10$^{th}$ class and the petitioner possessed that qualification as on that date, his services ought to have regularized in the post of Assistant. Learned counsel further contends that as the petitioner worked in the Technical Establishment Section for more than ten years the respondent ought to have considered the case of the petitioner for regularization in the same post i.e. Assistant. In support of his contention learned counsel relied on the decision of the Apex Court in BHAGAWATI PRASAD v. DELHI STATE MINERAL DEVELOPMENT CORPORATION[1].

Mr. P. Suresh Reddy, learned Standing Counsel for TTD, on the other hand, submits that inasmuch as the petitioner was initially appointed as NMR Binder in TTDs Press, pursuant to the GO Ms.No.296, dated 19-4-1988, the petitioner's services were regularized as Binder Gr-II and merely he was deputed to work in the Establishment Section, TTD Administration Office, that too in place of one Mr.P. Ramakrishna Rao, the petitioner cannot claim his case to be considered for regularization as Assistant. Learned counsel also submits that there is no order passed by the respondent posting him to work as Assistant in the Establishment Section and it is only for administrative convenience the service of the petitioner were utilized in various departments, and his services were regularized in the post of

Binder Gr.II in view of his initially engagement as NMR Binder. Learned counsel further submits that even otherwise the petitioner is not eligible for absorption as Assistant as the qualification for Assistant/Shroff is pass in intermediate and the petitioner admittedly did not posses intermediate qualification.

Having heard the learned counsel for the parties and having perused the entire material, I am of the considered view that the writ petition is liable to be dismissed for more than one reason. Firstly, there is no order appointing the petitioner as NMR Assistant to make a grievance against the respondent-TTD in regularizing his services as Binder Gr.II. The petitioner never raised any objection when he was initially treated as NMR Binder, even though it is true that equally there is no appointment order engaging him as NMR Binder, but the petitioner was aware of the fact that he was being engaged as NMR Binder prior to his regularization as Binder Gr-II. Having worked as NMR Binder prior to his regularization in various Sections, he cannot seek regularization of his services in the post of Assistant merely he was posted to work as Assistant in the vacancy caused by some other Assistant working in that place. The averments made by the petitioner in the affidavit that he was initially engaged as NMR Assistant and the proceedings deputing him to work in different sections including the Establishment Section, cannot in any way lead to a conclusion that the petitioner was initially engaged as NMR Assistant to seek regularization in that post.

The Apex Court in BHAGAWATI PRASAD's case (1 supra) at para 6 held thus:

> *"Practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with but it is so at the time*

*of the initial entry into the service. Once the appointments of petitioners were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. It can be said that three year's experience, ignoring artificial break in service for short period/periods created by the management, in the circumstances, would be sufficient for confirmation. If there is a gap of more than three months between the period of termination and re-appointment that period may be excluded in the computation of the three years period. Therefore, the petitioners are entitled to equal pay at par with the persons appointed on regular basis to the similar post or discharge similar duties, and are entitled to the scale of pay and all allowances revised from time to time for the said posts." (Para 6)*

but, the decision relied on by the petitioner in BHAGAWATI PRASAD's case (1 supra) does not apply to the facts of this case. It is was case relating to persons discharging the duties analogous with that of the regular employees and in that case the petitioners were posted to work in a particular post, and under those circumstances the Apex Court held that practical experience would always aid the person to effectively discharge the duties and is a sure guide to assess the suitability. But in the instant case the petitioner was deputed to work in various departments of the TTDs and as such the relief sought for by the petitioner cannot be granted.

The writ petition fails and it is accordingly dismissed. No costs.

Nrg. 12-8-2004.

To

1. The Executive Officer,

Tirumala Tirupati Devasthanam

Tirupati, Chittoor District.

2.2CD copies